

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

ANDREW HOWARD, JR.,	)	CASE NO. 1:12 CV 1661
	)	
Plaintiff,	)	JUDGE DONALD C. NUGENT
	)	
v.	)	<u>ORDER ADOPTING</u>
	)	<u>MAGISTRATE'S REPORT AND</u>
	)	<u>RECOMMENDATION</u>
TERRY TIBBALS,	)	
Warden,	)	
	)	
Defendant.	)	

This matter comes before the Court upon the Report and Recommendation of Magistrate Judge Greg White. The Report and Recommendation, issued on July 22, 2013, is hereby ADOPTED by this Court. Petitioner filed this action requesting a writ of habeus corpus pursuant to 28 U.S.C. § 2254, challenging – *inter alia* – the constitutionality of his judgment of conviction.

On July 25, 2006, a Cuyahoga County (Ohio) Grand Jury indicted Andrew Howard, Jr., on counts of aggravated murder, aggravated robbery, and having a weapon under disability. *See* O.R.C. § 2903.01; 2911.01; 2923.13. All but the aggravated murder and weapons charges were dismissed and, in August of 2007, Howard moved to bifurcate proceedings relating to the weapons charge. The trial court granted the motion and Howard entered a jury waiver as to that charge.

On March 28, 2008, Howard waived his right to a jury trial. The trial court subsequently convicted him of the lesser-included offense of murder in violation of O.R.C. § 2903.02, inclusive of the firearm specifications; and the charge of having a weapon while under a disability in violation of O.R.C. § 2923.13. On May 19, 2008, the trial court sentenced him to life imprisonment and five years to be served concurrently, respectively. Following a lengthy appellate process, during which Howard's conviction and sentence were affirmed, he filed the instant Petition for Writ of Habeas Corpus.

Here, petitioner Howard articulates four discrete grounds for relief. As Magistrate Judge Greg White cogently details, all four are without merit. Magistrate Judge White has thus recommended that Howard's petition be denied. Noting that Howard did not timely file any objections to the Magistrate Judge's Report and Recommendation, the Court has reviewed the Report *de novo*. The Court concludes that the Magistrate Judge's Report properly addresses the parties' arguments and treats them wholly consistently with applicable law. The Court therefore adopts the Report *in toto*.

Moreover, for the reasons stated in the Magistrate Judge's Report, a reasonable jurist could not conclude that dismissal of the Petition is in error or that Petitioner should be permitted to proceed further. Accordingly, the Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith, and there is no basis upon which to issue a certificate of appealability. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

IT IS SO ORDERED.

/s/Donald C. Nugent  
DONALD C. NUGENT  
United States District Judge

DATED: January 17, 2014